

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

09/30/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2002-008832

FILED: _____

VIA VENTURA APTS

CRAIG D HENLEY

v.

RICHARD SIMPSON, et al.

MILTON KENT MECHAM

REMAND DESK CV-CCC
SCOTTSDALE JUSTICE COURT

MINUTE ENTRY

This Court has jurisdiction of this civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

This is an appeal from the Scottsdale Justice Court's denial of a motion to set aside a forcible detainer judgment against the Appellant (Richard Simpson), on the basis of lack of in personam jurisdiction. Appellant allegedly became aware of the judgment nearly five years after it was entered, after obtaining a copy of his credit report.

The sole issue to be addressed is whether the lower court had in personam jurisdiction over Appellant, therefore having

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authority to enter the judgment against him. After a careful examination of the record, I find that overwhelming evidence exists to show that Appellant did not reside at the residence where service of process was made in July of 1997. It is evident that Appellant was residing in San Diego during that time. Therefore, the lower court did not have in personam jurisdiction over Appellant and the judgment was void.

When reviewing the sufficiency of the evidence, an appellate court must not re-weigh the evidence to determine if it would reach the same conclusion as the original trier of fact.¹

All evidence will be viewed in a light most favorable to sustaining a judgment and all reasonable inferences will be resolved against the Appellant.² If conflicts in evidence exist, the appellate court must resolve such conflicts in favor of sustaining the judgment and against the Appellant.³

An appellate court shall afford great weight to the trial court's assessment of witnesses' credibility and should not reverse the trial court's weighing of evidence absent clear error.⁴ When the sufficiency of evidence to support a judgment is questioned on appeal, an appellate court will examine the record only to determine whether substantial evidence exists to support the action of the lower court.⁵ The Arizona Supreme Court has explained in State v. Tison⁶ that "substantial evidence" means:

¹ State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert. denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980); Hollis v. Industrial Commission, 94 Ariz. 113, 382 P.2d 226 (1963).

² Guerra, supra; State v. Tison, 129 Ariz. 546, 633 P.2d 355 (1981), cert. denied, 459 U.S. 882, 103 S.Ct. 180, 74 L.Ed.2d 147 (1982).

³ Guerra, supra; State v. Girdler, 138 Ariz. 482, 675 P.2d 1301 (1983), cert. denied, 467 U.S. 1244, 104 S.Ct. 3519, 82 L.Ed.2d 826 (1984).

⁴ In re: Estate of Shumway, 197 Ariz. 57, 3 P.3d 977, review granted in part, opinion vacated in part 9 P.3d 1062; Ryder v. Leach, 3 Ariz. 129, 77P. 490 (1889).

⁵ Hutcherson v. City of Phoenix, 192 Ariz. 51, 961 P.2d 449 (1998); State v. Guerra, supra; State ex rel. Herman v. Schaffer, 110 Ariz. 91, 515 P.2d 593 (1973).

⁶ SUPRA.

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More than a scintilla and is such proof as a reasonable mind would employ to support the conclusion reached. It is of a character which would convince an unprejudiced thinking mind of the truth of the fact to which the evidence is directed. If reasonable men may fairly differ as to whether certain evidence establishes a fact in issue, then such evidence must be considered as substantial.⁷

The record is replete with evidence supporting Appellant's claim that he was not properly served. There is no evidence at all that Appellant was residing at the place where he was served. In fact, Appellee merely argues he did not know Appellant had moved out. It was an abuse of the lower court's discretion to deny the motion to set aside the judgment. Consequently, I must reverse the decision of the lower court as not supported by the record.

The Appellee incorrectly argues that the judgment should be upheld based on the fact that five (5) years passed before Appellant filed the motion to set aside the judgment. Rule 60(c) of the Arizona Rules of Civil Procedure provides, in part:

On motion and upon such terms as are just, the court may relieve a party...from a final judgment for...the following reasons:

. . .

4. The judgment is void;
5. The judgment has been satisfied, released, or discharged...or
6. Any other reason justifying relief from the operation of the judgment.

⁷ Id. at 553, 633 P.2d at 362.
Docket Code 019

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Under subparts 4, 5 and 6, no time frame is given as to when the motion to set aside the judgment must be filed; the rule simply states "The motion shall be filed within a reasonable time..."⁸ The record shows that when the Appellant became aware of the judgment, he took every reasonable step to have the judgment set aside. The motion was clearly filed within a "reasonable time."

IT IS THEREFORE ORDERED reversing and vacating the judgment of the Scottsdale Justice Court.

IT IS FURTHER ORDERED remanding this matter back to the Scottsdale Justice Court for all further and future proceedings.

⁸ Ariz. R. Civ. P. Rule 60(c), 17 A.R.S..
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